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*see also*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT LEON BUCKNER,  
Plaintiff

:

:

vs.

: CIVIL ACTION NO. 1:CV-00-1594

DR. ANTHONY BUSSANICH,  
DONALD ROMINE, Warden  
Defendants

:

:

FILED  
HARRISBURG, PA

MAR 15 2001

O R D E R

MARY E. DIANDREA, CLERK  
PER *[Signature]* DEPUTY CLERK

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The Defendants have filed a motion to dismiss under Fed. R. Civ. P. 12(b)(1) which relies on matters outside the Plaintiff's complaint. The Defendants recognize that such evidentiary material is normally considered on a motion for summary judgment but seek to justify their procedural decision by arguing that their motion attacks our subject-matter jurisdiction to entertain the action. (Supporting brief at p.1 n.2).

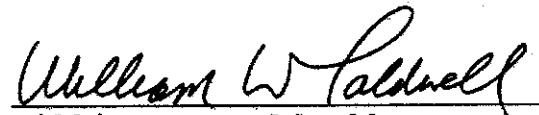
The difficulty with the Defendants' position is that, as they themselves recognize on page 10 of their supporting brief, their motion, based on the Plaintiff's failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e, does not touch on our subject-matter jurisdiction to adjudicate the Plaintiff's lawsuit. See Nyhuis v. Reno, 204 F.3d 65, 69 (3d Cir. 2000).

The motion must therefore be converted into a motion for summary judgment, and the Plaintiff must be given notice of that conversion so that he can supply any additional evidence, if he desires, in opposition to the motion. See Hancock Industries v. Schaeffer, 811 F.2d 225 (3d Cir. 1987).

We note that the Defendants could have at the outset styled this motion correctly as one for summary judgment. Under Fed. R. Civ. P. 56(b), defendants are authorized to file summary-judgment motions "at any time." See also Hubicki v. ACF Industries, Inc., 484 F.2d 519, 522 (3d Cir. 1973). Unfortunately, their misstyling of the motion requires us to enter this order.

AND NOW, this 15th day of March, 2001, it is ordered that:

1. The Defendants' motion to dismiss (doc. 11) is converted into a motion for summary judgment.
2. The plaintiff shall have fourteen days from the date of this order to supply any evidentiary material, not already submitted, relevant to the motion.

  
William W. Caldwell  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

March 15, 2001

Re: 1:00-cv-01594 Buckner v. Bussanich

True and correct copies of the attached were mailed by the clerk to the following:

Robert Leon Buckner  
USP-LEW2  
Federal Prison Camp  
33001-037  
P.O. Box 2000, Unit 1  
Lewisburg, PA 17837-2000

Matthew E. Haggerty, Esq.  
U.S. Attorney's Office  
228 Walnut Street  
P.O. Box 11754  
Harrisburg, PA 17108

cc:

Judge	( )	( ) Pro Se Law Clerk
Magistrate Judge	( )	( ) INS
U.S. Marshal	( )	( ) Jury Clerk
Probation	( )	
U.S. Attorney	( )	
Atty. for Deft.	( )	
Defendant	( )	
Warden	( )	
Bureau of Prisons	( )	
Ct Reporter	( )	
Ctroom Deputy	( )	
Orig-Security	( )	
Federal Public Defender	( )	
Summons Issued	( )	with N/C attached to complt. and served by:
		U.S. Marshal ( ) Pltf's Attorney ( )
Standard Order 93-5	( )	
Order to Show Cause	( )	with Petition attached & mailed certified mail
		to: US Atty Gen ( ) PA Atty Gen ( )
		DA of County ( ) Respondents ( )
Bankruptcy Court	( )	
Other	( )	

MARY E. D'ANDREA, Clerk

DATE:

3/15/01

BY:

STV  
Deputy Clerk